



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL CASE NO. 6 OF 2017

REPUBLIC

PROSECUTOR

VERSUS

FARAJ WAFULA MAKOKHA

ACCUSED

RULING ON SENTENCE

1. The Accused Faraj Wafula Makokha was convicted of murder as provided for under Section 203 as read with Section 204 of the Penal Code in a Judgement delivered by Hon. Justice S. Chirchir before she was transferred.
2. The task that this court has is to pass a sentence as provided by Section 200 (2) of the Criminal Procedure Code.
3. A social inquiry was conducted as directed by court and a pre-sentence report filed.
4. In mitigation, the Accused expressed remorse to the victim's family and to the public. He submitted that he is aged 52 years old with

five minor children who all look upon him for sole parental responsibility. He urged the court to temper justice with leniency as he would wish to be the best example of a reformed offender. He prayed for a non-custodial sentence or a minimum custodial sentence while noting that the victim's family is in good terms with him.

5. On its part, the Prosecution pointed out that the Accused continues to maintain his innocence despite the conviction. They submit that the Accused is yet to come to terms with the fact that he committed the offence and so he cannot be termed to be remorseful. The Prosecution submitted that he is a first offender but needed a custodial sentence for him to be properly rehabilitated.
6. The pre-sentence report confirmed the Accused's averment that he was a father of five children who are all minors and attending various primary schools. According to the report, the Accused upholds his innocence and maintains that the victim, who was his wife, committed suicide. Notwithstanding the claim of innocence, it is indicated that the Accused expressed remorse and prayed for leniency citing his role as the family's sole breadwinner.
7. The victim's family are said to be seeking a stringent sentence in the hope that it would offer them closure while acting as a deterrence to other would-be offenders. The community on its part decried domestic violence and strongly condemned the Accused's actions. The pre-sentence report concludes that the Accused is not suitable for community based rehabilitation.

8. The objectives of sentencing as set out in the Sentencing Policy Guidelines 2023 is as follows:-
- i. **Retribution:** to punish the offender for his/her criminal conduct in a just manner;
 - ii. **Deterrence;** to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences;
 - iii. **Rehabilitation;** to enable the offender reform from his/her criminal disposition and become a law-abiding person;
 - iv. **Restorative justice;** to address the needs arising from the criminal conduct such as loss and damages;
 - v. **Community Protection;** to police the community by incapacitating the offender.
 - vi. **Denunciation;** to communicate the community's condemnation of the criminal conduct.
 - vii. **Reconciliation;** to mend the relationship between the offender the victim and the community.
 - viii. **Reintegration;** To facilitate the re-entry of the offender into the society.
9. The court must therefore ensure that in its endeavour to impose a sentence, the aims and purposes of the penalty are achieved. The objectives of sentencing are considered holistically and not in piecemeal as the said objectives are multi-faceted.
10. The factors that determine an appropriate sentence were laid out in the Sentencing Policy Guidelines (2023) and reiterated in **Francis**

Karioko Muruatetu & Another v. Republic; Katiba Institute & 5 others (Amicus Curiae) [2017] KESC 2 (KLR) where the Supreme Court laid down the considerations to be taken into account during re-sentencing and which factors are relevant for a fresh sentence. The factors are:-

(a) age of the offender;

(b) being a first offender;

(c) whether the offender pleaded guilty;

(d) character and record of the offender;

(e) commission of the offence in response to gender-based violence;

(f) remorsefulness of the offender;

(g) the possibility of reform and social re-adaptation of the offender;

(h) any other factor that the court considered relevant.

11. The mitigating factors in this case are the fact that the Accused has five minor children who are wholly dependent on him. The aggravating factors are that he is still in denial despite the conviction. He committed femicide in the presence of an eight (8) year old child, and severely assaulted his wife, a woman who depended on him for love and protection.
12. As much as the Accused's minor children will suffer, the victim's life can never be revived and her children have suffered permanent loss from her death.
13. Having carefully weighed the mitigating and aggravating factors, I sentence the Accused to twenty five (25) years imprisonment. The Accused was first arraigned in court on 8/2/2017. He was released

on bond on 25/9/2017 and remained free until his conviction on 20/2/2025. Section 333 (2) of the Criminal Procedure Code obligates the court to factor in the period the Accused spent in custody during the trial. Those days shall be taken into account in computation of the sentence.

14. Orders accordingly.

Dated, signed, and delivered at Kakamega, this 20th day of April 2026.

**A. C. BETT
JUDGE**

In the presence of:

Ms. Chala for the Prosecution

Mr. Osango holding brief for Mr. Shifwoka for the Accused

Court Assistant: Polycap